

THE WILDERNESS SOCIETY ET AL.

IBLA 81-606

Decided August 19, 1982

Appeal from a decision of the Montana State Director, Bureau of Land Management, denying in part the protest of the exclusion of certain lands from further wilderness review. 8500 (931)

Affirmed in part; reversed in part; set aside and remanded in part.

1. Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

2. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

3. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

Organic Act Directive (OAD) 78-61, Change 2 at 5, provides that BLM may properly

adjust the boundary of an inventory unit to exclude a substantially noticeable imprint of man.

4. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act

Organic Act Directive (OAD) 78-61, Change 3 at 3, provides that BLM may in certain instances properly adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

5. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act--Words and Phrases

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

APPEARANCES: Bill Cunningham, Helena, Montana, for appellants; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The Wilderness Society et al. 1/ appeal from a decision of the Montana State Director, Bureau of Land Management (BLM), dated March 13, 1981, denying in part their protest of the exclusion of certain lands from further wilderness review. Seven inventory units located along the Missouri River in

1/ Appellants are The Wilderness Society, Montana Wilderness Association, Defenders of Wildlife, Sierra Club, American Wilderness Alliance, and Jerry Berner. The notice of appeal also lists the Wildlands and Resources Association and the Montana Audubon Council as appellants. These latter two groups, having failed to file a protest against the State Director's final intensive inventory decision, are not parties to the case within the meaning of 43 CFR 4.410. Elaine Mikels, 41 IBLA 305 (1979). The right of appeal is limited to a party to a case who is adversely affected by a decision of BLM. The appeals of the Wildlands and Resources Association and the Montana Audubon Council are, accordingly, dismissed. Conoco, Inc., 61 IBLA 23, 25 n.1 (1981). The State Director's final intensive inventory decision was published in the Federal Register on Nov. 14, 1980, at 45 FR 75589.

Phillips, Blaine, Fergus, and Chouteau Counties are at issue in the instant appeal.

The State Director's review of these areas was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken by the State Office pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. The State Director's announcement of designated wilderness study areas (WSA's) marks the end of the inventory phase of the review process and the beginning of the study phase.

Appellants present a number of arguments in their statement of reasons on appeal. To properly address these arguments, our decision is divided into sections corresponding to the units on appeal.

Tongue River Breaks Contiguity (MT-027-736)

Appellants charge error in BLM's denial of their protest against the exclusion of 285 acres from the Tongue River Breaks Contiguity WSA. This WSA, whose designation was announced by BLM in its November 14, 1980, notice, contains 1,484 acres. 45 FR 75589. If the acreage under appeal were found by this Board to have been wrongly excluded from the WSA, an enlarged WSA, containing some 1,769 acres, would result.

[1] In Tri-County Cattlemen's Association, 60 IBLA 305, 314 (1981), this Board held that an area of less than 5,000 contiguous acres cannot qualify as a WSA under section 603(a) of FLPMA. That section limits the Secretary's authority to designate lands as WSA's to roadless areas of 5,000 acres or more and roadless islands of the public lands. The fact that the lands on appeal are contiguous with a Forest Service proposed wilderness area does not alter this limitation. Tri-County Cattlemen's Association, *supra* at 310.

Neither the 285 acres on appeal nor the 1,484 acres in the Tongue River Breaks Contiguity WSA can qualify as a WSA under section 603(a). Accordingly, the State Director's protest decision of March 13 is affirmed as modified; the State Director's decision to designate 1,484 acres as a WSA is reversed. ^{2/} As pointed out in State of Nevada, 62 IBLA 153 (1982), and Tri-County Cattlemen's Association, *supra*, BLM has the authority to pursue wilderness review of these areas under other provisions of FLPMA, specifically, 43 U.S.C. §§ 1712 and 1732 (1976). The nonimpairment standard set forth in section 603(c), however, would not apply to such an area under 5,000 acres. *See also Don Coops*, 61 IBLA 300, 305-6 (1982).

The Wall (MT-066-249)

Inventory unit MT-066-249 was originally proposed as a WSA in the State Director's March 28, 1980, Federal Register notice. 45 FR 20570. Following receipt of public comments, however, BLM concluded that the unit did not possess wilderness characteristics and, accordingly, announced in its November 14, 1980, notice that the unit was dropped in its entirety from further wilderness review. 45 FR 75590. Appellants' protest of this decision was denied.

In its narrative summary, BLM found that inventory unit MT-066-249 was divided into 3 areas by two roads. There appears to be no issue that these roads exist and properly divide the unit. Two of the areas are acknowledged by appellants to possess less than 5,000 contiguous acres each. As to these two areas, this Board's decision in Tri-County Cattlemen's Association, *supra*, is ample support for BLM's decision to exclude these areas from further wilderness review under section 603(a). An area (other than an island) less than 5,000 acres in size is properly dropped from BLM's wilderness review program under section 603(a). There remains in controversy, therefore, only a single area of approximately 6,700 acres in the eastern section of the inventory unit.

This 6,700-acre eastern section and the two smaller areas to the west were found by BLM to lack outstanding opportunities for either solitude or a primitive and unconfined type of recreation. BLM's narrative summary stated that the unit's small size, narrowness, and lack of tall vegetation required a visitor to constantly search for seclusion; opportunities for recreation

^{2/} We note also that this unit is not composed of contiguous acreage, contrary to the Wilderness Inventory Handbook (WIH, Sept. 27, 1978) at pages 6, 15. Had the acreage of this unit exceeded 5,000 acres without the acreage of any one of its three parts exceeding that figure, the unit would similarly fail as a WSA under section 603(a).

were found to exist, but were described as neither unique nor of greater quality than those of surrounding areas.

Appellants take exception to BLM's findings, pointing out that BLM acknowledged that the topography is capable of hiding reservoirs, ways, and an electrical line bisecting the unit; in appellants' view, this same topography is capable of providing outstanding opportunities for solitude. On the basis of the diversity of primitive and unconfined types of recreation, e.g., hiking, fishing, hunting, river running, etc., appellants contend that outstanding opportunities for a primitive and unconfined type of recreation exist. Outstanding opportunities for river running are present, appellants maintain, because approximately 87 percent of the unit is located in the designated Wild and Scenic River Corridor of the Missouri River.

As this Board has stated on numerous occasions, the question whether an inventory unit possesses outstanding opportunities for either solitude or a primitive and unconfined type of recreation calls for a highly subjective judgment by BLM. Sierra Club, 62 IBLA 367 (1982), and cases cited therein. In order to guide the exercise of this judgment, BLM has issued Organic Act Directive (OAD) 78-61, Change 3, July 12, 1979, which addresses the issue of solitude at pages 3-4:

It is erroneous to assume that simply because a unit or portion of a unit is flat and/or unvegetated, it automatically lacks an outstanding opportunity for solitude. It is also incorrect to automatically conclude that simply because a unit is relatively small, it does not have an outstanding opportunity for solitude. Consideration must be given to the interrelationship between size, screening, configuration, and other factors that influence solitude.

[2] It is clear from the narrative summary that BLM gave proper consideration to each of the factors affecting solitude set forth in the OAD. Furthermore, it appears from the record that BLM possesses firsthand knowledge of the land and has received comments from groups whose interests span a broad spectrum. Under these circumstances, we believe that BLM's subjective determination as to the opportunity for solitude in the eastern 6,700 acres is entitled to our considerable deference. Sierra Club, supra. A similar holding is applicable to its determination that this area lacks outstanding opportunities for a primitive and unconfined type of recreation. In so holding, we note that many of the recreation activities which appellants cite to support the diversity of activities available in the unit occur in the Missouri River outside the unit's boundary.

Stafford (MT-066-250)

In the November 14, 1980, announcement of final intensive inventory decisions, the State Director designated the western 4,700 acres of the Stafford inventory unit as a WSA. The remaining 2,477 acres to the east were found to lack outstanding opportunities for either solitude or a primitive and unconfined type of recreation and were, accordingly, dropped from further wilderness review. 45 FR 75589. Appellants' protest charged error in BLM's consideration of outside sights and sounds to support its finding

that outstanding opportunities were lacking in the eastern portion. The State Director's response of March 13, 1981, denied this protest. In the statement of reasons on appeal, appellants renew their protest argument and further note that the vehicle way that divides the unit into two parts is an improper boundary. Appellants maintain that WSA boundaries should be defined by roads rather than vehicle ways. In addition, appellants claim that this vehicle way, dividing the unit through sec. 28, T. 23 N., R. 18 E., Principal meridian, is a substantially unnoticeable impact and, therefore, is inappropriate as a boundary for this further reason.

[3] OAD 78-61, Change 2 at page 5, reveals the error in appellants' statement that WSA boundaries must be defined by roads. Any imprint of man that is found to be a substantially noticeable impact may serve as a boundary to a WSA. A vehicle way that has been determined to be substantially noticeable is, therefore, an appropriate boundary.

In its narrative summary of December 1979, however, BLM concluded on two occasions that the vehicle trail through sec. 28 is not substantially noticeable. See summary, pages 3, 7. BLM's worksheet A, dated April 1979, reveals that BLM found the vehicle trail to have been improved, but not maintained; the southern part of this trail was reported to be in use, and soil was exposed along vehicle tracks present, contrary to its steeper northern section. BLM further found that there existed "definite cut banks" in the trail. A later narrative summary, appearing in November 1980 as part of BLM's final inventory decisions for the Miles City and Lewistown districts, seemingly contradicted the earlier narrative by placing a WSA boundary along this vehicle trail.

In the absence of BLM's statements that the vehicle trail dividing the Stafford inventory unit is substantially unnoticeable, this Board would be inclined to defer to BLM's expertise in establishing WSA boundaries. In such event, the bald conclusion voiced by appellants as to the severity of the impact would not overcome this deference. BLM's failure to state whether it now considers the vehicle trail through sec. 28 to be substantially noticeable, however, leaves in doubt the validity of this boundary. This Board is not in a position to make this finding; accordingly, the State Director's decision denying appellants' protest of this unit is set aside, and the Stafford inventory files are remanded to BLM for its determination whether or not this vehicle trail is a substantially noticeable impact or otherwise qualifies as a WSA boundary. BLM is urged to support its position in detail. This determination should take the form of a decision addressed to appellants. 3/

As set forth above, the vehicle trail at issue divides the inventory unit into two parcels, each less than 5,000 acres in size. If the trail forms a proper boundary dividing the unit, neither of the two parcels is of sufficient size to qualify as a WSA under section 603(a). Tri-County

3/ BLM's decision shall be sent certified mail, return receipt requested. To the extent that appellants are a party to the case and to the extent that they are adversely affected by a decision on remand, such decision would be subject to the right of appeal. 43 CFR 4.410.

Cattlemen's Association, supra. If the trail does not divide the unit, the entire inventory unit is properly designated a WSA, because outstanding opportunities for solitude are acknowledged by BLM to exist in the western portion of the inventory unit. As set forth in OAD 78-61, Change 3 at page 3 "[a] unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of a unit." See also San Juan County Commission, 61 IBLA 99, 107 (1982).

Ervin Ridge (MT-066-253)

The Ervin Ridge inventory unit presents yet another occasion to consider whether BLM has properly modified unit boundaries during the intensive inventory. During the intensive inventory of this unit, BLM divided the unit into three parts: A western part of approximately 9,100 acres, which has been dropped from further wilderness review; a central WSA of 12,000 acres; and an eastern part of 1,400 acres, also dropped from further wilderness review. Because of the location of state sections on the east and west side of the central WSA, there exist narrow corridors of public land flanking the WSA on these sides. BLM has divided the inventory unit by establishing boundaries at these points along section lines.

If BLM has properly drawn a boundary between the central WSA and the eastern 1,400 acres, this eastern portion must fail as a WSA under section 603(a) because of its deficient size. Don Coops, supra at 305. BLM's narrative summary of November 1980 found that a congested corridor only 120 yards wide connected the central WSA with the eastern portion of the inventory unit. Maps furnished by appellant show that the eastern portion is 3 miles in length and slightly less than 1 mile wide. BLM characterized this eastern portion as a narrow finger of roadless land extending outside the bulk of the unit and found that its opportunities for solitude or a primitive and unconfined type of recreation were less than outstanding; this area, accordingly, was dropped from further review. Appellants contend that this boundary adjustment at the southeastern corner of state sec. 36, T. 24 N., R. 20 E., Principal meridian, is based on an arbitrary legal description, contrary to OAD 78-61, and is motivated by manageability concerns. Appellants further maintain that the eastern portion possesses outstanding opportunities for solitude; its location adjacent to a 3-mile stretch of the Missouri River, a component of the National Wild and Scenic Rivers System, gives it outstanding opportunities for a primitive and unconfined type of recreation in appellants' view.

[4] Although it is most common for BLM to establish the boundaries of an inventory unit or WSA along roads or substantially noticeable imprints of man, OAD 78-61, Change 3 at page 3, authorizes BLM to adjust unit boundaries based on the outstanding opportunity criterion in three instances:

- (a) When a narrow finger of roadless land extends outside the bulk of the unit;
- (b) When land without wilderness characteristics penetrates the unit in such a manner as to create narrow fingers of the unit (e.g., cherrystem roads closely paralleling each other);

(c) When extensive inholdings occur and create a very congested and narrow boundary area. These situations are expected to rarely occur, and boundary adjustments in such cases may only be made with State Director approval. Very good judgment will be required in locating boundaries under such conditions so as to exclude only the minimum appropriate land. Such boundary adjustments are not permissible if the land in question possesses an outstanding opportunity for primitive and unconfined recreation. [Emphasis in original.]

BLM relied on item (a) in adjusting the eastern boundaries of the Ervin Ridge unit. Contrary to appellants' contention, its action was consistent with OAD 78-61. Its finding that outstanding opportunities for solitude or a primitive and unconfined type of recreation are lacking in the eastern portion of the unit is entitled to this Board's deference. Sierra Club, supra at 372. Appellants' disagreement with BLM's subjective determinations does not establish error in these determinations.

BLM's boundary adjustment separating the central WSA from the western 9,100 acres has been drawn on the section line between secs. 1 and 2, T. 23 N., R. 19 E. At this location, a narrow corridor of public land, approximately 1/4 mile wide, connects the central WSA to the western portion of the unit. As set forth above, BLM may adjust unit boundaries based upon roads, substantially noticeable imprints of man, or upon the outstanding opportunity criterion. Because the relevant area between secs. 1 and 2 appears to be wholly without impact, it is assumed that BLM drew this boundary based upon the outstanding opportunity criterion. As such, its justification for this action must be found in the three above-quoted provisions of OAD 78-61, Change 3.

From the narrative summary published in November 1980, it appears that BLM sought to justify its boundary adjustment on the basis that land without wilderness characteristics penetrated the western unit in such a manner as to create narrow fingers of the unit and deprive this area of outstanding opportunities for solitude. The narrative summary states that opportunities for solitude are not outstanding in this parcel, because many roads following ridge tops penetrate the unit and create a situation where an individual or group seeking solitude must seek out a secluded spot in the drainage bottoms or along the river. Upon careful study of BLM's maps showing impacts within the western portion of the Ervin Ridge unit and upon careful examination of worksheet A listing the ways and roads in this area, it is possible to identify four roads whose impacts penetrate the unit. ^{4/} It is difficult, however, to discern whether other impacts shown on the maps are sufficiently severe as to create land without wilderness characteristics. Comments appearing on worksheet A are inconclusive. If BLM seeks to justify its boundary adjustment on the basis that lands without wilderness characteristics penetrate the unit, it should state this position clearly and identify those

^{4/} These roads are identified as vehicle ways IV, VI, IX, and XIV in BLM's worksheet A, April 1979.

intrusions which create narrow fingers of the unit. If its boundary adjustment is supported by another provision of the OAD, it should set forth this provision and demonstrate its applicability to the facts at hand.

If, as appears from its protest response and the November 1980 narrative summary, BLM has found the western portion of the unit to be severely impacted and thus lack naturalness, OAD 78-61 requires BLM to use care to eliminate only severely impacted areas from the WSA. A boundary adjustment coinciding with a section line is unlikely to accomplish this in the instant case. OAD 78-61, Change 2 at page 5, provides that boundaries may be relocated on the physical edge of an imprint of man or according to a legal description if to do so would eliminate the imprint and as little adjacent land as possible. The OAD also provides for boundary relocation based on minor imprints of man whose cumulative effect may be substantially noticeable. Id. To clarify the basis for BLM's boundary adjustment and its exclusion of the western portion from further wilderness review, BLM's response to the protest is set aside for this western portion, and the Ervin Ridge inventory file is remanded to BLM. A new response to the protest, in decision format and announced in the manner set forth in our discussion of the Stafford unit, should be issued to appellants addressing in detail the issues above.

BLM's decision denying appellants' protest of the exclusion of the eastern part of the Ervin Ridge inventory unit from further wilderness review is affirmed. Its decision as to the western part of the unit is set aside, and the case file remanded to the State Office for action consistent herewith.

Bullwhacker (MT-066-255)

The Bullwhacker inventory unit contains 40,851 acres of land that BLM dropped in its entirety from further wilderness review in its November 1980 final inventory decision. The narrative summary accompanying this decision based rejection on the lack of naturalness in the unit caused by some "45 vehicle ways, 57 reservoirs, gas lines, and 45 live or dry gas wells." The summary also acknowledged that the area had a "dissected and rugged appearance" because of the numerous coulees that feed into Bullwhacker Creek within unit boundaries. Forty percent of the area was described by BLM as timbered in scattered concentrations. These tall trees and the unit's "jagged topography" were acknowledged to provide an outstanding opportunity for solitude.

Appellants protested the dropping of this unit from further wilderness review, focusing on the lack of naturalness identified by BLM. New boundaries were proposed for the unit by appellants, eliminating some of its intrusions and reducing the area of the unit to 10,000 acres. Appellants' protest acknowledged BLM's finding that an outstanding opportunity for solitude existed within the original Bullwhacker boundaries.

BLM's brief protest response held that appellants' 10,000-acre parcel would not receive further wilderness review because outstanding opportunities for solitude or a primitive and unconfined type of recreation did not exist within the open drainages. BLM also stated that the 10,000-acre protest parcel encompassed portions of the Big Bullwhacker and Little Bullwhacker Creeks.

It thus appears from BLM's protest response that a lack of naturalness was not the cause for dropping appellants' 10,000-acre parcel from further wilderness review; rather, BLM dropped this parcel because it lacked outstanding opportunities for solitude or a primitive and unconfined type of recreation. This, of course, is a reversal of BLM's conclusion for the Bullwhacker unit as a whole. While BLM's protest response is not necessarily inconsistent with the November 1980 narrative summary, it poses at least one unanswered question. Based on careful study of BLM maps, it appears that many of the numerous coulees that feed into Bullwhacker Creek are within the boundaries of appellants' 10,000-acre parcel; it further appears that timber is present in this parcel. In BLM's final narrative summary, the jagged topography of the coulees and the presence of tall trees were acknowledged to provide an outstanding opportunity for solitude in the unit as a whole. There is no clear explanation why these factors do not produce similar opportunities in appellants' 10,000-acre parcel.

Our inability to either affirm or reverse BLM's response to the protest is in large part caused by its brevity. No mention is made of what appears to be a reversal of BLM's rationale for denying further wilderness review of this unit. No statement occurs explaining whether or not the outstanding opportunities for solitude that were found to exist in the original unit are outside the boundaries of appellants' 10,000-acre parcel. No indication appears how the open drainages in the 10,000-acre parcel differ from those in the remainder of the unit.

BLM's decision denying appellants' protest of the exclusion of the Bullwhacker unit from further wilderness review is set aside, and the case files are remanded. BLM is directed to issue to appellants a new protest response in decision format setting forth a more complete response to appellants' protest and answering the issues posed above. As set forth in our discussions of the Stafford and Ervin Ridge units, to the extent that appellants are parties to the case and to the extent they are adversely affected by a decision on remand, appellants will have 30 days upon receipt of BLM's decision to file an appeal with BLM.

Cow Creek (MT-066-256)

In BLM's November 14, 1980, announcement of intensive inventory decisions, 36,200 acres of the Cow Creek inventory unit were designated a WSA and 34,913 acres were dropped from further review. Though appellants' protest alleged several errors by BLM, their statement of reasons is limited to BLM's decision to drop an area of approximately 8,000 acres located in the southwest part of the unit. Appellants state on appeal that the northern boundary of this area should be a route, which BLM has identified as a road, traversing secs. 10 through 14, T. 24 N., R. 21 E., Principal meridian. This 8,000-acre area is part of a larger 9,500-acre parcel which BLM addressed in its protest response. They take exception with BLM's finding that outstanding opportunities for solitude or a primitive and unconfined type of recreation are lacking in this parcel and charge error in BLM's adjustment of unit boundaries.

The aforementioned parcel is almost entirely isolated from the WSA by private lands and a vehicle route. By drawing unit boundaries along the section lines common to secs. 31 and 32, T. 24 N., R. 22 E., and secs. 5

and 6, T. 23 N., R. 22 E., BLM made this isolation complete. Appellants charge error in this boundary adjustment, pointing out that no impacts exist along this revised boundary. If this adjustment had not been made, the corridor connecting the WSA to the parcel at issue would measure a proximately 600 yards at its narrowest part.

As set forth in our discussion of the Stafford and Ervin Ridge units, boundaries may be adjusted along roads, substantially noticeable imprints of man, or based upon the outstanding opportunity criterion. If boundaries are adjusted based upon the outstanding opportunity criterion, one of three situations, quoted above, must exist. BLM based its boundary adjustment upon its finding that two roads penetrate the 9,500-acre parcel and create lands without wilderness characteristics therein. Because of such lands, it found that outstanding opportunities for solitude were lacking; the narrative summary notes that an individual desiring solitude would have to seek out a secluded spot in the drainage bottoms or along the river and stay there. Opportunities for a primitive and unconfined type of recreation, while present, were found to be less than outstanding because they were neither unique nor of greater quality than those of surrounding areas.

[5] Upon examination of worksheet A, prepared prior to BLM's narrative summary, it appears that none of the three vehicle routes traversing the 9,500-acre parcel is being maintained by mechanical means. As noted in Conoco, Inc., supra at 28, BLM has relied upon the following definition of the word "roadless" found in the legislative history of FLPMA, H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976): "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road." By BLM's own definition, therefore, it appears that none of the three routes (IX, X, and XI) traversing the parcel qualify as a road; nor does a finding appear in the record that maintenance has been unnecessary because of stable soils in the parcel. See Sierra Club, supra at 369.

If vehicle routes IX, X, and XI are properly designated as ways rather than roads, their presence may nevertheless justify BLM's boundary adjustment if BLM has determined that they are substantially noticeable imprints of man. The narrative describing the parcel, however, states that the area has few impacts and retains its natural appearance. Comments on worksheet A seemingly contradict this statement by pointing to "major construction" causing "deep cut banks * * * often 8-10' high."

Though appellants do not allude to the data set forth in worksheet A, they contend that vehicle route X (through secs. 22, 23, 24, and 25, T. 24 N., R. 21 E.) is lacking maintenance and is in disrepair. Appellants also maintain that BLM's boundary adjustment is contrary to OAD 78-61. Appellants' statements, while largely conclusory, focus on those findings of BLM most in need of clarification. To resolve these apparent contradictions, the State Director's decision denying appellants' protest of the exclusion of the southwest portion of the Cow Creek unit from further wilderness review is set aside, and the case file is remanded to BLM for preparation of a new decision in response to appellants' protest addressing the inconsistencies in the record. Specifically, BLM should determine whether vehicle routes IX, X, and

XI are roads; if so, it should state who improved and maintains them and when. National Outdoor Coalition, 59 IBLA 291, 299 (1981). If such vehicle routes are not roads, BLM should determine whether or not their imprints are so substantially noticeable as to cause lands without wilderness characteristics to penetrate the parcel and create narrow fingers of the unit. Justification for its boundary adjustment must be found in OAD 78-61, Change 3 at page 3, in any of the three situations described therein. If no support exists for a boundary adjustment, so much of the 9,500-acre parcel possessing naturalness characteristics may be designated a WSA. A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of a unit (OAD 78-61, Change 3 at 3). A new protest response, in decision format, should be announced in the manner set forth in our discussion of the Stafford, Ervin Ridge, and Bullwhacker units.

Chimney Bend (MT-068-245)

The Chimney Bend inventory unit, although recommended for WSA status in BLM's March 28, 1980, proposed decision, supra, was dropped in its entirety from further wilderness review in the final intensive inventory decision published November 14, 1980. BLM dropped this unit, because it found that the southern half of the unit lacked naturalness. Within the unit's 16,600 acres were found 5 capped gas wells, 2 water savers, 14 reservoirs, 5-1/2 miles of fence, 1 corral, a developed spring, 7 dry gas wells, and 10 dead-end roads. If one were to adjust unit boundaries to exclude these intrusions, BLM found, the result would be a narrow strip of land along the Missouri River with a congested southern edge, deeply penetrated by narrow fingers of private land and by cherrystemmed roads. BLM described the opportunities for solitude within this remaining portion as less than outstanding as a result. Opportunities for a primitive and unconfined type of recreation, while present in the form of hunting, hiking, backpacking, horseback riding, nature viewing, and photography, were similarly found to be less than outstanding.

In their statement of reasons, appellants acknowledge that the unit contains seven cherrystemmed roads and describe this condition as "an excessive amount of cherrystemming with an unacceptably high level of impact." To remedy this situation, appellants have proposed that new boundaries be drawn for the Chimney Bend unit, eliminating all but three cherrystemmed roads. As modified, the unit unquestionably possesses wilderness characteristics, appellants contend. Appellants further maintain that the State Director did not address their boundary modifications and that BLM is preoccupied with "overly strict purity standards."

Although we note that the State Director did not comment directly on the boundary modifications suggested by appellants, BLM's narrative summary did address the possibility of adjusting boundaries to eliminate the intrusions it had found. As set forth above, it concluded that the unit so modified would possess a narrow configuration with numerous penetrations precluding outstanding opportunities for solitude. Upon careful examination of appellants' boundary modifications, it appears that appellants have drawn boundaries contrary to the very guidelines which they charge BLM with violating in adjusting the boundaries of the Ervin Ridge and Cow Creek units. Specifically, appellants propose that boundaries be drawn in secs. 22, 23, 27, 28, and 32, T. 23 N., R. 19 E., Principal meridian, that do not correspond

to roads, imprints of man identified as substantially noticeable, or the outstanding opportunity criterion quoted above. Appellants do not establish error in BLM's actions by proposing boundaries in violation of the standards that BLM is compelled to follow. The State Director's decision denying appellants' protest of the exclusion of the Chimney Bend unit from further wilderness review is affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Director is affirmed in part, reversed in part, and vacated and remanded in part for action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

